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Town of Brookline

Massachusetts

BOARD OF APPEALS
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Jonathan Book
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0063
FRED STARIKOV
20 MARION STREET, BROOKLINE, MA

Petitioners, Fred Starikov, applied to the Building Commissioner for permission to construct a building with five dwelling units. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed January 26, 2017, at 7:00 p.m. in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on January 12, 2017 and January 19, 2017 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

Notice of Hearing

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

20 Marion Street to demolish an existing structure and construct a building with five residential units in an M-1.5 (Apartment House) Residence District, on January 26, 2017 at

7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Fred Starikov)
Precinct 10

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

- 1. Section 5.09.2.d: Design Review**
- 2. Section 5.43: Exception to Yard and Setback Regulations**
- 3. Section 5.60: Side Yard Requirements**
- 4. Section 5.62: Fences and Terraces in the Side Yard**
- 5. Section 6.04.3: Design of All Off-Street Parking Facilities**
- 6. Section 6.04.14.c: Design of All Off-Street Parking Facilities**
- 7. Any additional relief the Board may find necessary**

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at llgellineau@brooklinema.gov

Jesse Geller, Chair

Christopher Hussey

Jonathan Book

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jonathan Book and Board Members Kate Poverman and Lark Palermo, Michael Yanovitch, Deputy Building Commissioner, and Ashley Clark, Planning and Zoning Coordinator, were also present at the hearing. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was a representative for the Petitioner, Joshua Fetterman and the architects, Dartagnan Brown and Daniel

Artiges, Embarc Studio, 60 K Street, 3rd Floor, Boston, MA 02127. Chairman Book called the hearing to order at 7:00 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the Petitioner worked in concert with the direct abutter at 26 Marion Street to reach a proposal that was agreeable. Attorney Allen stated that an existing slope on the site presented some difficulty, but after meeting with the Planning Board on three occasions, the Petitioner constructed a design that is cohesive with the streetscape of Marion Street. He stated that the Planning Board expressed their appreciation of the implementation of their suggestions into the final proposal. Attorney Allen then highlighted a non-comprehensive list of the changes that were made including:

1. The width of the driveway was reduced from 23'-0" to 14'-0;"
2. The driveway was revised to accommodate the building structure and parking circulation;
3. Included a designated handicap parking space in the parking area and revised circulation for handicap access to the building;
4. Enlarged the lobby and modified access from the parking area;
5. Removed fence along property line; and
6. Raised open space at rear yard, included a revised landscaping plan which, at the request of the neighbor, includes fencing and growing vines.

Architect for the Petitioner, Dan Artiges stated that 20 Marion is a short walk away from Coolidge Corner. He then provided a visual representation of the streetscape on Marion Street and stated that the subject property is near a four story apartment building at 14 Marion and a two family building at 24-26 Marion Street. He stated that a fence was remove to provide more

breathing room to both abutters. He stated that in working with the neighbor at 26 Marion Street, a number of decks were removed to address privacy concerns.

Mr. Artiges stated that the site slopes radically which necessitates the 20 ft. setback relief requested for the proposal. Mr. Artiges stated that there will be a total of 10 parking spaces and that 12 bicycle spaces are provided on-site. He stated that the Building is 49'-11" including the roof structure with 900 s.ft. of usable open space on the ground floor and 810 s.ft. of usable open space on the roof deck.

Mr. Artiges stated that the Petitioner engaged Verdant Design to design a planting schedule around the site which will maintain street level landscape space at the front and incorporate a vine planting system with wood and vine aspects.

Board Member Poverman asked about the grading of the driveway. Mr. Artiges stated that the grade starts at 8% increases to 16% and slopes back to 8%. He stated that Peter Ditto has reviewed the proposal and the S-curve of the driveway was implemented to preserve the street tree.

Attorney Allen stated that the Petitioner no longer seeks relief from the provisions of **Section 6.04.14.c** and **Section 5.62** of the Zoning By-Law but does require relief from the provision of **Section 5.60**, which may be granted pursuant to **Section 5.43** of the Zoning By-Law.

With respect to **Section 5.43** of the Zoning By-Law and counterbalancing amenities, the Petitioner provided a 20' x 14' landscape area in the front of the building for the planting of replacement trees on the street. The Petitioner also proposes to repave the access walkway near 14 Marion Street.

Attorney Allen then discussed special permit relief under **Section 9.05** of the Zoning By-Law arguing: (1) the specific site is an appropriate location because the proposed building is in a

mixed neighborhood with a 2 ½ story brick apartment buildings and a 6 story brick apartment building to the rear of the property; (2) the use will not adversely affect the neighborhood because the proposed building is more consistent with the surrounding structures. The Petitioner has spoken to neighbors and has worked with the neighbor at 26 Marion Street to address her concerns and implemented design details that are sensitive to her property; (3) there will be no nuisance or serious hazard to vehicles or pedestrians: Due to the one way ramp, a lighted notification system will be installed for cars entering and exiting the garage at the same time; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use as described in the Section 5.09 statement that was submitted by the Petitioners. Additionally, Attorney Allen stated that the Petitioner consulted with all necessary departments including transportation and engineering; and (5) there will be no effect on the supply of housing.

For the reasons stated above, Attorney Allen argued, a special permit may be granted under **Section 5.43** of the Zoning By-Law.

Board Member Poverman posed questions concerning **Section 6.04.3** of the Zoning By-Law whether a full time attendant is necessary. Attorney Allen stated that with the use of stackers, each person can operate their own vehicle and therefore the provisions of **Section 6.04.3** may be waived by special permit.

Board Member Poverman asked Mr. Yanovitch to opine on the applicability of the aforementioned provision. Mr. Yanovitch confirmed that **Section 6.04.3** of the Zoning By-Law may be waived by special permit.

Chairman Book asked whether anyone would like to speak in favor of or in opposition to the proposal. No comments were offered.

Attorney Scott Gladstone, 1244 Boylston Street, Brookline, appeared on behalf of the owners of 26 Marion Street. He stated that he worked with the Petitioners and asked that the Planning Board recommended conditions be applied. Attorney Gladstone stated that the owner of 26 Marion Street will hire an independent surveyor to establish boundaries, and will take pictures of existing drywall conditions. Mr. Gladstone stated the intention to work with the Petitioner on a construction management plan.

Ms. Clark then delivered the findings of the Planning Board:

FINDINGS

Section 5.09.2.d: Design Review

4. Community and Environmental Impact and Design Standards

Multiple dwellings with four or more units require a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. The relevant sections of the design review standards are described below:

a. Preservation of Trees and Landscape

The majority of mature trees are located at the property's southeastern corner. The project landscape architect is working with the developer to determine which existing trees can be saved. One mature tree in front will be preserved by relocating the curb cut. Any trees that are removed will be replaced. An area in the front will be provided for plantings. A landscape plan has not yet been received.

b. Relation of Buildings to Environment

The building complies with most of the zoning requirements for an M-1.5 district. The front of the building faces north and casts minor shadows on the public way and to either side of the building.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood

The heights of nearby buildings range from two to six stories and there is an historic church located across the street. The proposed structure is one story higher than the multi-unit building next door at 14 Marion; however, the top floor is set back. The front setback will be in alignment with the abutting buildings. The proposed façade materials include clapboard siding with fiber cement panels. Cement fiber trim will be used for detail.

d. Open Space

The proposal meets zoning requirements for both useable open space and landscaped open space. Over half the required open space is located in the southeastern portion of the rear yard which is available for use by all residents. There is a proposed roof deck for the penthouse unit.

e. Circulation

Due to a grade change, the parking on site is below street level and under the first floor residential units. The driveway is 23 feet wide and will allow for two way traffic in and out of the parking area. The parking will accommodate 10 spaces with the use of stacker parking. The front entrance and the garage entry both face Marion Street. The front entry is accessed by an ADA compliant ramp.

f. Stormwater Drainage

The stormwater management system will comply with Article 8.25.

g. Utility Service

Electric, telephone cable TV and other lines and equipment will be supplied overhead. All other utilities will be located underground. Trash and recycling will be stored in the trash room and the property manager will put out bins on collection days. There will be no dumpster on site.

h. Advertising Features

There are no plans at this time to do more than identify the address on the entry of the building.

i. Special Features

N/A

j. Safety and Security

All pedestrian ramps on site will be compliant with ADA guidelines.

k. Heritage

The existing building at 20 Marion will be demolished. It was found to be non-significant by the Preservation Commission.

l. Microclimate

Roof top condensing units are planned and screening is anticipated for these units. They will meet the Noise Control provisions.

m. Energy Efficiency

Energy efficiency is required to meet or exceed the "stretch code" provisions of the building code. Lighting will be high efficiency and most fixtures will use LED bulbs. Windows will be energy star rated and have insulated glazing units. Building materials will be sustainably sourced and environmentally friendly where possible.

n. Shadow Studies

Comparative shadow studies were done for June 21st, March 21st, September 21st, and December 21st at 9 am, 12 pm, and 6 pm for the existing and proposed building. They are shown on drawings A17 through A19.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Section 5.62 – Fences and Terraces in the Side Yard (Retaining Wall)

| Dimensional Requirements | Required | Proposed | Relief |
|----------------------------------|-----------------|-----------------|-----------------|
| Side Yard Setback (right) | 20.1' | 10.0' | Special Permit* |
| Side Yard Setback (left) | 20.1' | 11' 10" | Special Permit* |

* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

Section 6.02 Off-Street Parking Regulations:

| Approved Article 19 Parking Reqs. | Applicant's Proposal | Finding |
|--|-----------------------------|----------------|
| 9 | 10 | Complies* |

***NOTE ON PARKING REQUIREMENTS:** The proposed number of parking spaces complies with the recently passed Town Meeting Warrant Article 19 – Transit Parking Overlay District. Under the old zoning, 11 spaces would have been required. The applicant is proceeding at risk pending approval by the Attorney General. Should the Attorney General not approve Article 19, the applicant will need to seek a modification for the necessary relief for reduced parking.

Section 6.04.3 – Design of All Off-Street Parking Facilities

Parking facilities shall be designed so that each motor vehicle may proceed to and from the parking space provided for it without requiring the moving of any other motor vehicle. The Board of Appeals, however, may by special permit modify this requirement, and the dimensional requirements of paragraph (2) of this section where a parking facility is under full-time attendant supervision. The stackers can be activated by the residents, and this serves to fulfill the attendant provision.

Ms. Clark stated that the Planning Board is supportive of the proposal to construct a residential building at 20 Marion Street. The proposed building is in keeping with the scale of the surrounding neighborhood, and there are a number of similar apartment buildings. The reduced setbacks will be mitigated by proposed fencing between the building and neighbors on both sides. The Planning Board felt that the use of stackers in the parking area reduces the size of the parking area and allows the parking to fit under the first floor of the building. The building has been designed attractively and the site will be landscaped appropriately to counterbalance the reduced setbacks.

Therefore, the Planning Board recommended approval of the site plan prepared by Boston Survey, dated 8/9/16, and the revised architectural plans by Embarc Studio, dated 1/19/17 subject to the following conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations, with materials indicated, subject to the review and approval of the Assistant Director of Regulatory Planning. The air conditioner condensers shall be located on the roof away from the abutter's property at 26 Marion Street.
- 2) Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to the review and approval of the Assistant Director of Regulatory Planning, providing 26 Marion Street with a green screen of the new retaining wall substantially as depicted on the landscape plans of Blair Hines Design Associates submitted on December 9, 2016. The top of the proposed retaining shall be no higher than 6'2" above existing grade of the abutting portion of 26 Marion Street and the height of the fence above the retaining wall shall be no higher than 2'10". The fence shall be located on the interior edge of the wall. At least parts of the retaining wall will be covered in a wood veneer on the side facing 26 Marion Street in consultation with the abutter.
- 3) Prior to the issuance of a building permit, the applicant shall submit a construction management plan, subject to the review and approval of the Building Commissioner, with a copy to the Planning Department.
- 4) Prior to the issuance of a building permit, all newly proposed overhead utility connections shall be reviewed by the Director of Engineering and Transportation, if necessary.
- 5) Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.
- 6) Prior to the issuance of a Certificate of Occupancy, the applicant shall replace the existing concrete walkway at 26 Marion Street in kind with a new concrete walkway.

Deputy Building Commissioner Yanovitch stated that the Building Department has no objection to the relief as requested. He stated that the relief is fairly minimal for a size of the project. The Building Department will work with the Petitioners to ensure compliance should relief be granted.

The Board then determined, by unanimous vote, that the requirements for a special permit under Sections 5.09.2.d, 5.60, and 6.04.3 of the Zoning By-Law pursuant to Sections 5.43 and 9.05 of the Zoning By-Law were met. The Board made the following specific findings pursuant to said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will not have any effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following revised conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit a final site plan, floor plans and elevations, with materials indicated, subject to the review and approval of the Assistant Director of Regulatory Planning. The air conditioner condensers shall be located on the roof away from the abutter's property at 26 Marion Street.
- 2) Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to the review and approval of the Assistant Director of Regulatory Planning, providing 26 Marion Street with a green screen of the new retaining wall substantially as depicted on the landscape plans of Blair Hines Design Associates submitted on December 9, 2016. The top of the proposed retaining shall be no higher than 6'2" above existing grade of the abutting portion of 26 Marion Street and the height of the fence above the retaining wall shall be no higher than 2'10". The fence shall be located on the interior edge of the wall. At least parts of the retaining wall will be covered in a wood veneer on the side facing 26 Marion Street in consultation with the abutter.
- 3) Prior to the issuance of a building permit, the applicant shall submit a construction management plan, subject to the review and approval of the Building Commissioner, with a copy to the Planning Department.

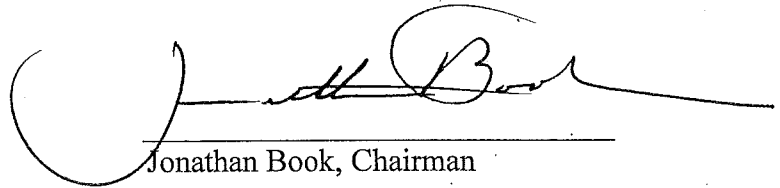
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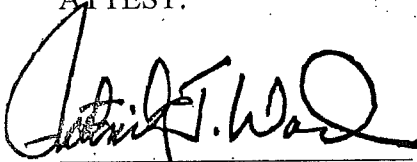
Unanimous Decision of
The Board of Appeals

Filing Date: 2/22/17



Jonathan Book, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals